

[Sri S. B. Adityan]

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I submit, will be to leave the original portion in the records of the proceedings of the House intact and also put in the remarks of the member with the President's orders on it. Supposing the original portion is deleted, how can any future reader know or find out what the offending portion was and why it was deleted. If it is deleted, there will be only a vacuum and there will be nothing for a future reader to see what this deletion was all about and for what purpose the apology of Dr. Tajuddin was offered."

MR. PRESIDENT:—"I request hon. Members not to proceed with this matter further. The hon. Member has requested that the portion might be deleted and it will be deleted."

SRI S. B. ADITYAN:—"I take it that the statement of Dr. Tajuddin will be published."

MR. PRESIDENT:—"It will be."

GOVERNMENT BILL.

III.—THE MADRAS ESTATES COMMUNAL, FOREST AND PRIVATE LANDS (PROHIBITION OF ALIENATION) BILL, 1947 (L.A. BILL No. 26 OF 1947), AS PASSED BY THE ASSEMBLY.

11-45
a.m.

* THE HON. SRI K. MADHAVA MENON:—"Sir, I move—
that the Madras Estates Communal, Forest and Private Lands (Prohibition of Alienation) a Bill, 1947 (L.A. Bill No. 26 of 1947), as passed by the Legislative Assembly be taken into consideration at once."

I need not dilate much upon this simple Bill, because it has been before the Press and the public for a considerable length of time. Sir, a number of representations were received by the Government that landholders were resorting, on a large scale, to the alienation and assignment of communal lands including the beds and bunds of tanks, and also of forests. Some landholders were also reported to have claimed communal lands as their private lands and to have assigned such lands for large sums of money. It was further alleged that several landholders were alienating their private lands after receiving large amounts by way of *nazarana*. Since the publication of the Prakasam Committee report in 1939, there was a feeling in the minds of the landholders that the Congress Government would proceed with that legislation either in pursuance of the Congress election manifesto or in pursuance of that report, and that the zamindaris would be abolished, and that relief would be given to cultivators and ryots. Perhaps in anticipation of that legislation being undertaken by the new Congress Government, alienations of communal lands and forest lands, and also alienations of lands, which were originally private lands, were going on. Such alienations and denudations of the forests became a very serious menace, and the Government in 1946 brought forward the Preservation of Private Forests Act as a temporary measure. In spite of that, there were alienations of forest, communal and private lands going on, and they have become so serious that Government had to resort to an Ordinance to prevent such

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alienations. This Bill that I have placed before you, and which has been passed by the Legislative Assembly, is only to make that Ordinance a law by the vote of this House. You know, Sir, . . . (Interruption.) I am protecting the land itself so that it may be given to those who require it. I am protecting also the landholders. They are people who require protection against themselves. The Ordinance, as you know, has to become law within six weeks of the commencement of the sitting of the Legislature, and that is, before the 26th of this month. There is no very great difference between this Bill and the Ordinance except in one respect, and that is the introduction of clause 4 in the Bill. This has been a matter of considerable comment in the Press and also in the other House. Retrospective effect is sought to be given under this Bill in the case of any communal or forest land, alienated on or after the 31st day of October 1939, and in the case of any private land alienated on or after the 1st day of November 1945. It is true that all retrospective legislation is, according to English jurisprudence, supposed to be bad, but in certain cases, it is necessary. Seeing the nature of the alienations that have been going on, we have taken the power to give retrospective effect to this legislation. But to avoid as much hardship as possible, all sorts of conceivable protection have been given to a *bona fide* purchaser even in the case of alienations. We have completely excluded all alienations in favour of public bodies, local boards, and religious and charitable endowments, whatever be the nature of the alienation. (Interruption.) They may be equally offenders. In the case of Karaikudi, the municipality purchased certain lands from the zamindar. It was not with the idea of converting that land into house-sites and constructing buildings upon it. It is not with the idea of depriving anybody that they have done it. In a proper transaction, which is not *mala fide*, the Government do not want to interfere. We have also excluded all alienations which are not above 20 acres in extent and also alienations which are more than 20 acres in extent to the extent of 20 acres. Lastly, Sir, we have excluded all alienations irrespective of their dates if they were in favour of an assignee or alienee in good faith and for valuable consideration. A person who has taken these lands from the landholder in good faith and for valuable consideration will not suffer any hardship by this retrospective effect, but if the alienation has been made *mala fide* with a view to deceive the general public that person must suffer, and that is the only reason for this retrospective effect. (Interruption by Dr. V. K. John.) Protection to communal lands had to be given. It is not a matter for private transaction. This clause on retrospective effect was not in the Ordinance. The other clauses were there. This Bill only re-enacts the Ordinance which was promulgated by the Governor. I seek the support and co-operation of the House to get this Bill through as early as possible, and I have already indicated the necessity for speed in the matter. I know,

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Sir, even yesterday, it was complained bitterly by this House, that this House is not given sufficient time nor the right to sit in the select committee on important Bills like this. The Leader of the House has already explained the position and given the necessary assurance that he could give regarding select committees. In this particular matter, it was not at all with the idea that this House should not sit in a joint select committee. This Bill could not be referred to a joint select committee for various reasons. It was very late when the Government came to the Legislative Assembly for a select committee. Even there, the select committee sat only on one day. The Bill had to be rushed through, because it had to become law before the 26th of this month. That is why, it was not referred to a select committee of this House. (Interruptions by Sri B. Narayanaswami Naidu and Sri R. Suryanarayana Rao.) I understand from my friends that the select committee's report has not been circulated. I do not know whether it is usual to circulate the select committee's report here. The select committee made one major change in the original Bill, that is, they removed the clause on retrospective effect. But on the floor of the other House Government moved an amendment to retain the retrospective effect with, however, all the saving clauses for a *bona fide* purchaser if the transaction was entered into in good faith and for valuable consideration. I appeal, Sir, for the co-operation of this House in getting this Bill through quickly."

MR. PRESIDENT :—" We get the Bill here as passed by the Assembly. I do not think we are interested in the select committee's report."

SRI B. BHIMA RAO :—" Sir, we do not know what are the recommendations of the select committee. Is it not necessary that we should have that information instead of having the same from the newspapers? "

MR. PRESIDENT :—" This seems to be a technical matter. It is a committee of that House. I do not know if we are entitled to a copy of the report. We see the changes made by the select committee, though we may not know their reasons."

DR. V. K. JOHN :—" Let us make it a convention that we have a copy of the select committee's report."

MR. PRESIDENT :—" I should like to have some technical help from you."

DR. V. K. JOHN :—" There is nothing either for or against in the rules, Sir."

* SRI R. SURYANARAYANA RAO :—" Sir, I am sure that the Hon. Minister Mr. Madhava Menon did not take us to be school boys. He began his speech by saying that this is a very simple Bill giving effect to an Ordinance that was promulgated by

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the Governor, and that Ordinance would lapse, and so to make the provisions of the Ordinance effective, this Bill had to be introduced. We have got a copy of the Ordinance. We have got a copy of the Bill as introduced in that House, taken from the *Fort St. George Gazette*, and we have the Bill as it has been adopted by the Assembly. Sir, if your office prepares a statement in three columns showing the various changes made, one will be surprised to hear that the Hon. Sri Madhava Menon should have made such a statement as he did. The Ordinance is only two pages, the Bill is three pages, and then the Bill as passed by the Assembly has gone to four pages, because of clause 4 which is a very lengthy one. That apart, Sir, that this is a very important Bill is evident to us at least from the long reports of the proceedings of the Assembly, and the description of a tense atmosphere that was prevailing in that House when this Bill was passed, which appeared in the newspapers. But we are not aware what led to that tense atmosphere. At least if the proceedings of the Assembly, along with this Bill, had been supplied to us, we would have been in a position to appreciate what it was that made the atmosphere so tense, and what led to the reported resignation of one Member of the Assembly, and the subsequent withdrawal of that resignation and other pertinent matters. We got all this information only from the newspapers. That apart, Sir, again I would say”

MR. PRESIDENT :—“ I fear the select committee's report would not give you the information.”

* SRI R. SURYANARAYANA RAO :—“ Owing to the kindness of the office I secured a copy of the select committee's report ; but that also differs from the Bill as it has been passed. 12 noon.

“ This is another instance to which I would wish to draw the attention of the Treasury Bench where we are asked to register our consent to an enactment that has been adopted in the other House, without giving us enough time to go into the select committee to influence the shaping of this Bill. As such I feel no purpose will be served by taking part in the debate on this Bill. When the Public Safety Act was brought forward by the previous Ministry we complained when we were asked to register our consent because the Ordinance passed previously was about to expire, and unless we did it, we were told the whole world would come to an end. Similarly with reference to this Bill the same thing is being said. We do not think any great mishap will occur if this Bill is not passed to-day. It strengthens our view which we expressed yesterday, that unless Government give an undertaking to this House that in matters of importance this House would also be given an opportunity to influence the framing of the Bill by giving them a place in the joint select committee I wish to say that I refuse to take part in adopting or rejecting this Bill. I am sure there are other hon. Members who feel like me that we

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are treated as school boys by the Treasury Bench, asking us to say "Aye" for everything they bring forward without giving us an opportunity to study, understand and influence in any way the shaping of the Bill. I do not think any purpose will be served by our going through this Bill under these circumstances. I feel and other hon. Members I am sure, will feel that they do not wish to take part either in adopting this Bill or even considering this Bill."

THE HON. DR. T. S. S. RAJAN :—" I think on behalf of the Government I gave the assurance yesterday. It is a pity we have to go back on it now. I say, in future whatever measures are brought forward before this House we shall see due time is given to hon. Members to discuss in the select committee. It is because of the peculiar nature of the things that happened in the other House that we had no time to give this House proper time for consideration. We shall see that no such thing happens in the future. I hope after this assurance is given members will have no cause for complaint."

* DR. V. K. JOHN :—" Sir, this Bill is peculiarly unhappy in my opinion. There is clumsy wording in it. There is also ignorance of elementary and fundamental principles of law relating to private property. And there is unnecessary and unwarranted interference with the ownership of private property. This Bill seeks to declare the sale, mortgage and lease or any other transaction relating to property void. Not only void, from the date when this Bill is passed into law but void retrospectively. Not only that, the landlord who mortgages or leases or sells land is guilty of an offence; and he is punishable not only with fine but with imprisonment for two years. Now I ask the mover of this Bill, what reason has he to interfere with the right of any person to deal with his property as he likes. He said or queried that it was on the ground of protection of the land. But nowhere is it suggested that land is being wasted because of being sold, mortgaged or leased. I can understand the lessee being rackrented and requiring protection. I can understand the mortgagor requiring protection but not the mortgagee. A person who lends money and takes a mortgage of another's land does not require protection. Now it is provided in the Bill that the owner of the property shall not mortgage his land. The Bill says, such a transaction is void. But what about the money paid? I ask, if Government is to acquire all zamindari land, what does it matter to them if the zamindar mortgages, sells or leases his land? Why do you interfere with the right of a private individual to deal with his property as he likes? Why do you destroy the credit of the owner of the property? Now if it is a fundamental principle accepted in any democratic government that you should not interfere with the freedom of the individual or his property unless that interference is absolutely necessary for the security of the State or the good of the community as a

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whole. Now why do you want to protect the seller and the mortgagor. He has received the money. You say the transaction is void. Then how does it protect the seller of the property?"

THE HON. SRI K. MADHAVA MENON :—" I never said I want to protect the seller of the property."

* DR. V. K. JOHN :—" Do you seek to protect the community as a whole? Is the community prejudiced by a person selling or mortgaging his land? After all the person who loses in the transaction is the person who pays hard cash.

" Further I do not know why you should put people in jail. How does this jail come in? Why should jail attract this national government every time a Bill is drafted? I can understand law declaring a transaction void, if it will prejudicially affect the interests of the community as a whole."

MR. PRESIDENT :—" I think jail comes in if the alienation takes place after the Bill becomes an Act."

* DR. V. K. JOHN :—" I beg to correct you, Sir. It is not so. Clause 3 (2) says: ' Any landlord who has contravened or contravenes the provisions of sub-section (1) . . . ' "

MR. PRESIDENT :—" What is sub-section (1) ? "

* DR. V. K. JOHN :—" That is why I said in the beginning there is clumsy wording in the Bill. Sub-section (1) says :

' No landholder shall sell, mortgage, convert into ryoti land, lease, or otherwise assign or alienate any communal or forest land in his estate on or after the date on which the Madras Estates Communal, Forest and Private Lands (Prohibition of Alienation) Ordinance, 1947, came into force, namely, the 27th day of June 1947. ' "

MR. PRESIDENT :—" So it is from the date on which the Ordinance came into force."

* DR. V. K. JOHN :—" Yes, Sir. You will see from clause 8 that it saves the Ordinance and all proceedings under it. I ask is it because we have obtained independence we are using this kind of language and murder the English language. It is all against democratic principles to provide for jail for such transactions. I can understand English language being used to the effect ' that any sale after the 27th day of June 1947 shall be void. ' * Instead of using this language, the Bill provides that no landholder shall sell land from the 27th June 1947. The draftsman of this Bill appears to be fond of clumsy wording.

* THE HON. SRI K. MADHAVA MENON :—" May I point out to my hon. Friend that the Ordinance did provide for this punishment for contravening certain provisions of the Ordinance."

* DR. V. K. JOHN :—" There it is saved. I am on this point, 12-15
that it provides that no man shall sell his property after the 27th p.m.

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June 1947. There is a provision in the Ordinance but the Ordinance is saved in clause 8. Again it is clumsy. Once it is saved why do you provide for it again. That it is clumsy is also clear from clauses 3 and 5 also. You will find that sub-clause (2) of clause 3 provides that any landholder who has contravened or contravenes the provisions of sub-section (1) and any agent of the landholder who has abetted or abets such contravention shall be punishable with imprisonment which may extend to two years, or with fine which may extend to five thousand rupees or with both. After providing this in clause 3 you come to clause 5 which says: it shall be lawful for any Magistrate of the first-class specially empowered by the Provincial Government in this behalf to impose a sentence of fine exceeding one thousand rupees. Why not put it after clause 3? When you say he can be fined up to Rs. 5,000 you know very well that a First-class Magistrate unless otherwise empowered cannot impose a fine of Rs. 5,000. Sir, there is no logic in the arrangement. I am not so much on that point. Why is it that there should be a legislation to continue this Ordinance? We were not parties to that Ordinance. Sir, why should there be any interference with the right of a person to deal with his property in any manner which he likes, to sell his property if he wants to sell it or mortgage his property and pay off his debt. How is the community affected? Sir, we are on the Grow More Food Campaign. The zamindar finds that he has got vacant land which he cannot cultivate and he wants to lease or sell it. How do you offend the community by letting him exercise his ordinary rights in relation to his property? Interference with the right of a person is a very serious matter. After all the private man has got certain rights regarding his person and property. I want to know what is the object of interfering with the private property of individuals. It is not for a democratic Government to interfere with personal liberties and private properties of individuals. You are providing that he shall not mortgage his property. You do not stop there. You say that he would be prosecuted. For what offence? Has he committed any offence against the general public? I say this is confused thinking. They cannot introduce a thoughtless piece of legislation. They introduce an Ordinance, then the Ordinance expires on a particular date. They do not think of introducing legislation up to the last moment. It has been rushed through in the Assembly and my Hon. and Learned Friend wants to rush it through this House. I say this is absurd. This Bill has been drafted in ignorance of fundamental principles of law. Every seller and mortgagor gives a guarantee that he has a title to that land. The general law protects the purchaser if a man sells away property that does not belong to him.

" Now section 4 says that any transaction of the nature prohibited by section 3 which took place, in the case of any communal or forest land, on or after the 31st day of October 1939—we are going back eight years—and in the case of any private

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land in a notified estate, on or after the 1st day of November 1945—we are going back two years—shall be void. Sir, this is confused thinking. Do they know what is the result of declaring a transaction to be void. Suppose a zamindar mortgaged a property and got Rs. 10,000 on the mortgage in 1939. You declare to-day it shall be void. What is the result? Because it has passed through the Assembly it must go through here also. I can assure you it will go through here because they have a majority. But I cannot be a party to this legislation. It is said that the transaction shall be void. You are depriving the purchaser of the property for which he paid the price or the mortgagee who lent money to the zamindar by depriving him of his security. The purchaser loses his property and the mortgagee loses his money. The security is destroyed. Whom are you penalizing? You are penalizing the man who has already got the money. You want to send him to jail. I can understand if a transaction is so bad that both the parties are in the wrong and you punish both of them. What is the object of the legislation? I hope in his reply the Hon. Minister who is a lawyer himself will address this House at least for the satisfaction of the public who will see the newspaper reports of the proceedings of this House. There is nothing in the Preamble which shows that a public purpose is served. You are simply interfering with the right of a person to deal with his property as he likes. I can understand an enactment saying that hereafter any transaction will be void. Then they go into a transaction with open eyes. I can never understand any transaction which took place years ago and which the existing law allowed being declared void in 1947 with retrospective effect—a transaction of purchase or sale or of mortgage or of lease. This is largely due to confused thinking and the ignorance of the elementary principles of law relating to property and ignorance of the fundamental principles which should guide any democratic form of Government under which they should always be reluctant to interfere with the fundamental rights of a person to his property. In ignorance of and contravening all principles this piece of legislation is rushed through this House and we are asked to be parties to this legislation. It is very wrong and after the amendment by a learned friend in the other House, namely, Mr. A. Vaidyanatha Ayyar, was accepted this Bill could as well have been scrapped."

MR. PRESIDENT:—"That covers instances which you gave."

* DR. V. K. JOHN:—"It could have been scrapped because any transaction which is not in good faith and for valuable consideration is dealt with by the general law. Why do you want to provide for it again? There again it is the ignorance of the principles of law. Once this amendment which of course is a very proper amendment was accepted by the Lower House then Sir, this whole legislation could have been scrapped because the

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amendment cuts at the very root. Under the general law any transaction which is not in good faith and not for valuable consideration and is a sham transaction is void. What I seriously object to is the provision of preventing the landholder from dealing with his property as he likes and giving retrospective effect to this provision of law. You are not hurting the landholder who, you say, has committed an offence. You are actually favouring him because that landholder has already got his money when he has sold the land or mortgaged his land. You favour him by saying that this transaction is void. When he is your favourite, when he is the man whom you want to help, why then make a provision that he shall go to jail or he shall be fined. Is it not the case that you release him from the sale and from the mortgage? Does not the property go back to him as a result of the transaction having been declared void? You are really favouring the man for whom you have provided fine and jail. This Bill is the result of confused thinking from the beginning to end and when you say now that you shall not do anything from the 27th June 1947, it is clumsy wording. You do not arrange your paragraphs. Then you accept an amendment which cuts at the root of the whole Bill and leaves the ordinary law re-enacted here.

“ Then, Sir, there is the ordinary distrust of the courts of law. When a piece of legislation is rushed through and then there is this distrust of the courts of law you can take it and you can presume that the framers of the Bill, the men who are responsible for the Bill, know very well that a court of law will not give protection in the way in which they want to give protection. Why do courts of law exist? To interpret an Act, to administer an Act, to administer the law and to do justice between the parties. Why distrust them? Because you know very well that you have done something wrong. Therefore you avoid the courts. The other day the High Court said that the Executive Government exceeded their jurisdiction. You do not want an independent court to say something on this Bill. If the matter goes before an independent court it will say: ‘ This is an extraordinary piece of legislation passed without thinking in language which is clumsy and without a knowledge of the principles of law.’ So you want to say now, ‘ Bar the jurisdiction of the courts.’ In any democratic form of Government you want the Executive, the Legislature and the Judiciary. These are the three branches of the Government. But here you introduce legislation and say that the courts of law shall have nothing to do with this matter. The Government are conscious that difficulties will arise as there is no clear wording and no clear drafting. So they say, ‘ If any difficulty arises it will be removed by an executive order.’ A clause like this has been repeated in almost every legislation that has been recently brought before the House. Vesting of power in the executive to remove difficulties in the working of legislation is unknown in any civilised democracy. I can understand the vesting of such power in the case of transitional legislation like the Government of India Act,

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1935, where you do not want to provide in detail for everything to be done during the transitional period which is expected to be only a few months. In such cases the executive takes power to solve any difficulties which may arise. But you do not find any such thing in any of the Imperial Acts or the Madras Acts. There is no such clause stating that if any difficulty arises, the Provincial Government may by order do anything, etc. 'Anything', except perhaps making a man a woman and a woman a man which they cannot! They can do anything which appears to them to be necessary for the purpose of removing the difficulty. This is a most objectionable clause which has been put in in almost every Bill which has recently been introduced."

MR. PRESIDENT :—" Which is the clause which the hon. Member says takes away the jurisdiction of the courts? "

* DR. V. K. JOHN :—" Clause 7."

MR. PRESIDENT :—" No, please read clause 7."

* DR. V. K. JOHN :—" Clause 7 says : ' No notification or order of the Provincial Government or of the District Collector under this Act shall be liable to be questioned in any Court of law '."

MR. PRESIDENT :—" Only notification ; that is all."

* DR. V. K. JOHN :—" No order also. It is only by notification or order everything is done. If a notification or order of the Provincial Government or the District Collector goes beyond the jurisdiction or power which we the members of the Legislature have given to the Executive, who is to question it? It will not come before the Legislature ; it is not our function. It is the ordinary function of the courts to see that the executive does not go beyond the jurisdiction given to them by the Legislature. But now the Government come here and ask us to pass a law saying that the courts will have no jurisdiction. Why distrust the courts? The courts of law do justice. If you pass an order which is legal and within your jurisdiction and just and proper, the courts will uphold it. The courts of law have always tried to uphold the proceedings, the decisions and the acts of the Government if they possibly can. That has been from time immemorial the tradition of the courts. Then why distrust the courts? You cannot ask us to bar the jurisdiction of courts, one important wing of the Government in a democratic country. And then in clause 9 you ask us to give up our jurisdiction, the jurisdiction of the legislature. You say : ' Many difficulties will arise ; we do not know them now. We anticipate difficulties. We will create difficulties if there is none. But you give us the power to remove those difficulties by an executive order.' Nobody can understand that. Suppose you pass an order beyond the jurisdiction we confer upon you, then the court of law cannot question you under section 7. That is what the executive is asking us in the guise of passing a simple legislation. They ask us to pass this law and pass it urgently,

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because the 26th October is coming and something will happen and the whole sky will come down upon us if we do not pass this legislation at once. Then we are asked to give them every power to remove every difficulty which the Secretary may find or the Under Secretary may find in its working. Because after all, what the Minister finds is what the Secretary finds. When the Secretary finds any difficulty he draws up an order and the Minister says, 'Yes' and the order is passed. The matter will not go before a court of law, because injustice only you can expect in a court of law! This is a legislation regarding private property without any object whatsoever. It is a piece of confused thinking of clumsy language and of ignorance of elementary principles of law. You want us to pass a legislation containing two clauses conferring all jurisdiction and all power on the executive. Sir, I cannot be a party to this legislation."

SRI B. NARAYANASWAMI NAYUDU:—"Sir, I propose to take the same stand as Mr. Suryanarayana Rao on this Bill. What is the difference between an Ordinance and an ordinary Bill or Act? An Ordinance is passed by the Executive without the sanction or consent of the Legislature in order to meet an emergency, whereas a Bill or an Act is placed before the Legislature, several stages are gone through carefully, the views of the Legislature obtained, and then given effect to. Now, Sir, what is the difference between the Ordinance which has been passed on this matter and the Bill which is now placed before the House by my hon. Friend? Unfortunately the Member who was in charge of the Bill is not here. You bring the Bill here to-day and say that it must be passed to-day and if it is not passed to-day there will be difficulty. Can we have any proper discussion of the matter with the sword hanging over our heads saying: 'If you do not pass it to-day, we shall have to go out of office.'?"

"Six weeks have been allowed for the Government to place the Ordinance before the Legislature for consideration. Why did not the Government place this matter before the Legislature earlier? What are the reasons for it? Why has not the full procedure for passing a Bill been adopted in this case? Of course, my hon. Friend Mr. Madhava Menon cannot explain this, but the Member in charge of the Bill must explain this. Why does he want under colour of a Bill to rush through this Ordinance? The Government simply come to this House and say, 'Please pass this Bill to-day.'"

"What is the use of placing this Bill before the House if at least we do not have a reasonable chance—never mind whether they are accepted or not—that our arguments are heard diligently, and that the Member in charge of the Bill is satisfied with the reasons given? If that hope is not given to us, what is the use of bringing a Bill to this House and saying that it has to receive the assent of this House or the concurrence of this House? It is a misuse of the provisions of Parliamentary procedure to place a

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Bill before the House to-day and say, ' You must pass it to-day. The enemies are at our gates. Unless this is passed we will go into slavery from to-morrow.' There have been 5 or 6 or 10 days of the Assembly meeting and the Government could easily have had a Joint Select Committee, but they did not want to have it. I ask the reason why; is it because of the difficulty of giving parity of representation to the two Houses? **Never mind parity.** At least some members of this House might have been associated with the Committee. Why was it not done? Even if it was not done, why do you come here on the last day and say that this must be passed to-day? Should there not be reasonable opportunities of debate when there is no emergency? I say, Sir, this is a perversion of parliamentary procedure. It is really Gandhism on a superscale, practically stopping all criticism. (The Hon. Dr. T. S. S. Rajan : ' What has Gandhism to do with this? ') It is a steam-roller business. English jurisprudence does not favour what may be called retrospective legislation. But Gandhian jurisprudence favours retrospective legislation. My hon. Friend asked why there should be imprisonment. Probably they would have substituted whipping in a non-violent manner!

' Sir, I do not want to go into the merits of the case. Though this is a Bill dealing with zamindars, it really deals with vital matters regarding tenants. You have made all sorts of waste lands cultivable. Ryots have taken up all these lands and cultivated them. Now do you want to call them forest lands, take them away from these people and distribute them at the rate of 5 acres to the political sufferers? A question has been put as to what is meant by valuable consideration and good faith. From 1937 to 1947 for ten years, in Kistna district, persons have entered upon waste lands and cultivated them. They may not have paid any fees, but they have reclaimed the lands, levelled them, put up bunds, and done so many things to make them cultivable. Suppose a zamindar has let a person into such a land and he has not paid one rupee by way of premium, is that land going to be treated as forest land taken away from him and granted to political sufferers at five acres each? Is there going to be any kind of revenge or justice or what is it? These things will all occur. If there has been a legitimate exercise of the powers, the courts should be allowed to decide.

' We know, Sir, much depends on the hon. Members on the opposite side. They should not forego their rights. They should say they would not submit to dictation like this and agree to what may be called Ordinance rule. It is open to them to say, ' We are not a flock of sheep or a pack of hounds to be driven like this.' I ask, Sir, are they all sheep or are they hounds? (An hon. Member : ' Neither. We are all members of this House.') Therefore I say ditto to what Mr. Suryanarayana Rao has said. I hope all the members of the House will exercise their rights and say, ' This sort of legislation will not be tolerated by us, never mind from whom it comes. Even if it comes from Mr. Gandhi, it does not

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matter.' The hon. Members should realise their responsibility. If the Bill is pressed, I call upon the Members of the House to defeat it. I call upon them to refuse permission to go on with this Bill at this stage."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Why not walk out in protest? "

SRI B. NARAYANASWAMI NAYUDU :—" We will vote and then walk out."

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p.m.

* SRI K. NATARAJAN :—" Mr. President, Sir, we at any rate some of the Congress members who are bound to vote for a Government Bill, are in a very embarrassing position. Especially after the appeal, couched in a somewhat violent language, made by my hon. Friend Mr. Narayanaswami Nayudu, we have to consider the matter. Government or the Treasury Bench, which want our allegiance, are bound to respect our feelings also.

" I am fully alive to the soundness of the criticism levelled against this Bill by my hon. Friend opposite. Section 3 of the Bill says that no landholder shall sell, mortgage, convert into ryoti land, lease, or otherwise assign or alienate any communal or forest land from the 27th June 1947. Can the Government say to-day that you should not alienate from the 27th June? Does it make sense? Is it grammatical? Because we are bound to give allegiance, are we to give up grammar and acquiesce in the want of sense to put it mildly? This grammatical mistake or the logical fallacy at least must be removed. Suppose some amendment is passed in this House, it will have to go before the Legislative Assembly. But the threat is there that we will have to pass this Bill to-day itself, because the 26th is close at hand. There is no time even for moving very simple amendments which are, on the face of it, absolutely necessary at least to obviate the charge that the Bill is badly worded. I myself have been a victim of bad wording in one of the previous Acts that we passed. I am referring to the Protection of Tenants Act. Why should not one or two more days be given for introducing at least happy wording? Suppose we accede to the wish of the Treasury Bench and say that this unhappy language shall remain. What will be the charge that will be levelled against us? At least let it be said and published in the papers that some members objected to the wording.

" The definition of forest land has been taken from the Ordinance. ' Forest land ' includes any ' waste land containing trees and shrubs, pasture land, and any other class of land declared by the Provincial Government to be forest land by notification in the *Fort. St. George Gazette*. What waste land is has not been defined. ' Waste land containing trees and shrubs.' How many trees, two, three or four or what? What is the nature of the shrubs? Forest land has already been defined in the Forest Act, and that definition may be adopted. All the lands which have been declared as forest lands as per Survey Registers and Record of Rights Registers can be taken as forest lands. I say at least for the sake of happy

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wording of the Acts to which we are asked to be parties, let us be taken into confidence and let sufficient time be allowed. My hon. Friend Mr. Narayanaswami Nayudu with his torrential eloquence asked: 'Are you a flock of sheep or a pack of hounds.' We do not want to be placed in the position of sheep or hounds. Heavens are not going to fall by postponing this measure. Let all the unhappy language remain there, after all it is only a temporary measure. Heavens are not going to fall by passing this measure either. The members of the Congress Party are bound to support the Bill and they will certainly vote for it in spite of our objection to the wording. But let us be treated courteously. The Ordinance was passed on the 27th June 1947, and the Government knew that it would expire on a certain date. Could they not have convened a meeting of the House earlier and brought forward this Bill? In all humility and with due deference to the members on the Treasury Bench, I suggest that at least in future they will allow sufficient time.

"As regards joint committees, there was a pertinent complaint yesterday. When the Council adjourned *sine die* some time ago you, Mr. President, referred to it in your closing speech. Even that has not been taken note of. Some members of the Council may be asked to join the committees (Mr. President: 'Officially or unofficially?') officially.

"I crave the permission of the House to touch upon one point which was referred to by Dr. John also. Proviso (v) to subsection (1) of section 4 says that nothing contained in this subsection shall be deemed to invalidate any such transaction in respect of any forest or private land entered into before the respective dates specified in clause (iii), in favour of an assignee or alienee in good faith and for valuable consideration. I know how the words 'good faith' and 'valuable consideration' were introduced in the Bill. I see you are making it retrospective from 1939. I will quote one very hard instance and leave the House to judge for itself. I do not speak about the position of a zamindar, but court decisions and High Court judgments have declared that an inamdar is the owner of his land. Suppose an inamdar executes a will in 1937 in favour of a relative, stranger or anybody. Is it not in 'good faith'? Should it be for 'valuable consideration' also? I give another instance: fifteen people claimed title to a zamindari in Tanjore district as reversioners. As they had no money, 14 of these 15 people alienated the zamin including porambokes, etc., so that the alienees may claim and recover it. Objection was taken that these 14 people are not the real reversioners but the 15th. It was after 1939 when the purchaser got an alienation from the 15th that the suit was decreed in the lower Court. It went in appeal and there also it was decreed. What is to become of that man. Is the transaction rendered null and void? All these things can be placed before the Members of the Government, and they can consider them. Why then should this Bill be rushed through?

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"Yesterday, my hon. Friend Mr. Ranga Reddi said that in speaking on the resolution regarding the linguistic division of the Province, he was in a very embarrassing position. I am to-day placed in the same awkward position. I fully grant that there are three features in the trend of recent legislation—(1) expropriation, (2) retrospective effect, and (3) ousting jurisdiction of courts. Probably, they may be necessary in some cases and may not be necessary in some cases. Section 7 reads that no notification or order of the Provincial Government or of the District Collector under this Act shall be liable to be questioned in any court of law. The notification is for the purpose of determining whether a particular land in an estate is a private land or not. Section 6 says that no prosecution shall be instituted under this Act against any person without the previous sanction of the District Collector. We know cases of acquisition of lands for public purposes. So far as the determination of the public purpose is concerned, the discretion is vested in the Government, and the affected party or citizen cannot question that right. Similarly it is only as regards the notification that the power of civil courts is taken away in this Bill. So far as that is concerned, I think there is no objection and I do not agree with my hon. Friend Dr. John.

"As regards the power given to the Government to do anything necessary to remove any difficulty, I have no objection, as this is only a temporary Act and as the provision will not trample upon the rights of parties.

"Again I appeal to the Treasury Bench: 'Don't throw too much strain upon your followers. Don't come here, issue a whip and say you should vote for this and that.' I am a person who very often ruminate and see whether a thing is right or wrong and whether it is in keeping with or against my conscience. Inasmuch as the object of this measure is a temporary one and as it is intended to protect certain people—whether it will actually protect the ryot or not is a debatable question—in spite of the defects in grammar and logic, I beg to submit that this House may be pleased to accord sanction if an assurance is given that hereafter we will not be placed in this sorry predicament.

1 p.m. "I think hon. Members opposite will be pleased with the explanation which I have offered just now on behalf of the members of the Congress party who are not on the Treasury Bench. Before I came to this hall, I consulted another experienced member of the party, also a lawyer himself, whether I can make a statement like this. He said that I would be perfectly justified in doing so. Whenever we come to this House, members of the opposition have been asking us, 'Are you always surrendering your conscience? Don't you search your heart before you vote?' Well, Sir, I am prepared to explain our attitude. First of all when a certain Bill comes up for consideration in the party what we do is this. We examine it carefully. If we think that it is wrong and if the majority in the party says that it is right, then we surrender our judgment on unimportant matters. Secondly when

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it involves a matter of policy, when it requires immediate consent and when it is represented to us that by not passing that Bill, the Congress policy- and programme will either be impeded or will not be achieved, we have to adopt the attitude we are taking. But it does not mean that we do not consult our conscience or simply act at the bidding of the party whip. Therefore my reply to the opposition is this. Do not hereafter make these light-hearted remarks that we partymen always surrender our conscience and always subscribe to the dictates of the party leader. No; we do not do so. We think over the matter deeply and examine it carefully and then only we give our vote. We examine not only as a matter of principle, but as a matter of policy. Of course I am aged and perhaps I may not live long and that is why I have ventured to make all these observations and give all this advice. I have appealed to the members of the Treasury Bench in one way and the members of the opposition in another way and I have explained what I have in my mind. After all is said and done, my only wish is that this party system based upon British system of parliamentary Government should go."

* SRI B. BHIMA RAO :—" Mr. President, before speaking on this Bill, I want to make a suggestion to the Hon. President and the members of the Treasury Bench."

MR. PRESIDENT :—" I should like to know whether you are speaking about the Bill or making a suggestion. It is enough if you do not speak again."

* SRI B. BHIMA RAO :—" Sir, I am only speaking about the Bill and in speaking about it, I want to make a suggestion. I am one of those who feel quite unhappy in taking part in this legislation. I think, Sir, that one who is a conscientious lawyer and a conscientious legislator will not be a party to this legislation. We have heard members of the oppositoin saying that they will not take part in the discussion and that they are going to non-co-operate. You are the custodian of the privileges of this House. Of course the main objectionable features of this legislation have been put in a nutshell by my hon. Friend Mr. Natarajan. He said that the objectionable features are : (1) giving retrospective effect to Bills ; (2) rushing through at the last moment ; (3) depriving the jurisdiction of civil courts and (4) expropriation without compensation."

" Now, Sir, what I suggest is this. When an important section of the House has raised such an objection to the Bill and has threatened that they will not take part in the passing of the legislation and that they would walk out if this Bill is proceeded with, we must recognize that there must be something really fundamental and serious in the objection and that it should not be treated lightly. With due courtesy to the Hon. President and to the House, I may state, Sir, that a similar occasion arose in the Central Legislature when the hon. Mr. V. J. Patel, the then President of the Central Assembly, adjourned its proceedings. He observed that when an

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important body like the Congress Party in the Central Legislature did not take part in the legislation, it was not right and proper on the part of the Government to bring in any controversial legislation. Now, Sir, some members have pointed out that section 4 of this Bill has come in, in an amplified form, although the Select Committee of the Legislative Assembly had sought to remove one of its main objectionable features, namely, giving retrospective effect to this kind of legislation. Now, they are given a slap on the cheek; and this amplified section was further amended by my friend Mr. Vaidyanatha Ayyar who seemed to have introduced an amendment in the course of the debate in the other House and though it is a well-meant amendment, I am afraid, Sir, it will become illusory when actual experience is gained in the working of this Act, because most of the properties might have been transferred by some form of gift and there might not have been valuable consideration involved. Later some innocent purchaser might also be involved in such transactions and from his own standpoint he might be just, but it would not be so when looked at by a court of law. Therefore, Sir, both conditions have to prevail, namely, 'in good faith' as well as 'for valuable consideration'. No doubt, latter transactions might have been *bona fide*, and one of the parties might have parted with consideration, but he might not have reason to believe that an earlier transaction of the property might be invalid according to the present standard of legislation, which consideration would not have entered into his mind at all. Therefore what I submit is, that this legislation is bound to create a lot of difficulties, complexities and hardships and a crop of litigation will arise and some innocent persons may become victims. That being the case, I feel the same embarrassment as my hon. Friend Mr. Natarajan feels with regard to taking part in this legislation."

MR. PRESIDENT:—"Do you want the Chair to help you out of your embarrassment?"

* SRI B. BHIMA RAO:—"No. Sir; I do not want you to do that. But I think you have got powers to do so. After all, the heavens are not going to fall on the 26th October when the Ordinance lapses and if this Bill is not passed. You have got any number of transactions which occurred after the date of the Ordinance and they may be declared invalid. Why go back to 1937, and why punish those people with imprisonment and fine? These objectionable features must be removed, Sir. A Select Committee consisting of the members of both Houses can be constituted to thrash out the Bill thoroughly once again. That is my submission, Sir, and I request you to adjourn the House and see that this suggestion of mine is considered by the Government."

MR. PRESIDENT:—"I have no objection to adjourn if the Congress Party refuses to take part in the proceedings."

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR:—"Mr. President, persons in my position cannot but feel considerable embarrassment, because frankly I am not in the opposition,

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and I generally feel that in a matter such as this, if the Government persist, we should consider it on its merits and give every support to the Government, if the matter is really urgent. On this present occasion may I refer to one fact which the Government have failed to take note of, when a very important measure like this is brought before this House? The Treasury Bench knows very well that this Bill is coming up before this House to-day. The discussions that have taken place in the other House should have more than impressed every one of us that there is something fundamental in this measure about which there can be no difference of opinion here also. On such an important measure, I really deeply regret—I will not say anything further—that the Hon. Minister in charge of the Bill should not have shown us the courtesy of being present here and should not have cared to explain the position more fully than any other member of the Treasury Bench can possibly do. For, I feel that the Hon. Minister in charge of the Bill had opportunities to contact many members of the Legislative Assembly and had opportunities to know from a deep study of this question,—for many many months, I take it,—something substantial which guided him to reach the conclusions he arrived at and which he finally placed before the Legislative Assembly. It is a matter once again of deep regret to some of us in this Council that that ordinary courtesy which we can very legitimately claim should not have been extended to us when such an important measure as this has been brought forward.

“ Sir, the Hon. Minister who moved this Bill has laid emphasis on the fact that it is a matter of great urgency, because the Ordinance will lapse on the 26th and nothing will take place afterwards. Now if you will refer to section 4 (1) you will find that this is a Bill which gives retrospective effect and if we are going to adopt this Bill, why should we not adopt it at any stage or on any day? Section 4 (1) states that ‘any transaction of the nature prohibited by section 3 which took place, in the case of any communal or forest land, on or after the 31st day of October 1939 and in the case of any private land in a notified estate, on or after the 1st day of November 1945, shall be void and inoperative and shall not confer or take away, or be deemed to have conferred or taken away, any right whatever on or from any party to the transaction: Provided, etc. . . .’

“ Now this clause takes away the bottom of the case put forward by the Hon. Minister who pleaded for the urgency of this legislation. If this Bill is necessary to-day, it certainly can be passed six months later or one year later so long as the principle of giving retrospective effect to certain provisions of it remains. I cannot therefore understand what the urgency is and I should like to have some explanation from the Treasury Bench as to how it becomes so urgent. If the Government had made up their minds and if the Legislative Assembly had made up its mind that retrospective provision is not only wanted but is also essential and will be put into effect, then I say that there is absolutely no urgency

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for this measure at all. Those of us who have read the proceedings in the newspapers have reason to believe that a compromise was arrived at at the last moment. I welcome such compromises everywhere, but the result of this compromise has been, I must confess—I am not going to the same extent as my hon. Friend Dr. V. K. John has gone, because of his legal knowledge he can do so—a great deal of confusion in the wording of section 4 and the sub-sections thereof. I do not think that the Government has had time to consider the compromise that has been reached in the Legislative Assembly—I stand subject to correction—and I would request the hon. Leader of the House to inform us whether such an important provision as that, which had been added to this Bill after the compromise, had been considered and discussed by the Cabinet and whether the Government had enough time to bestow its thought on the various provisions that were introduced at the last minute so as to expedite the passage of the Bill. All these are quite relevant considerations. I do not know whether the Cabinet as such has had an opportunity to consult its legal authority which generally gives advice on such matters, in regard to this particular provision, for I feel sure, Sir, that if that legal authority had been consulted and if the Government had taken the necessary time as they should have, on such an important and fundamental issue like this, surely the provisos to that clause would have been entirely different from what they are.

“Sir, I am not speaking from a legalistic point of view, but only from the point of view of a common man who has got to bear all the rigours of this measure once the other House and this House approve this particular clause and it is given effect to.

“Let me go straight into some of these considerations. It has been suggested that certain transactions will be exempted from the operation of this Act, provided they have been done in good faith and for valuable consideration. Now, Sir, this is a matter which is going to open the flood-gates of litigation and none except the bar will be happy at the prospect of such a legislation.”

SRI B. BHIMA RAO :—“There are conscientious lawyers too.”

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—
“Conscientious or not, when once your client comes to you, you are bound to give him the best advice possible. That is how I understand lawyers are doing their duty by their clients. On the one hand, everyone will have to go to a court of law for some reason or other on account of this particular provision, and on the other hand, there is a power vested with the Government—I do not for a moment offer any remarks; I will not make any insinuations and I will be pardoned if anybody misconstrues me on that subject—there is a power on the part of the Government to take these transactions before a court of law. Who is going to exercise it, and how? First of all Sir, it will be the Collector. Section 6 says: ‘No prosecution shall be instituted under this Act against any person without the previous sanction of the District Collector’.

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Now, I am, particularly when democratic assemblies are functioning, really dreadful of a power like that being given to any Government for the time being. It is true that this Government is there. They may know the provisions of this Bill and I am sure they will exercise it wisely. But are we sure that a Government that will come on a later day will have those provisions in mind and are we sure—to be quite frank—that discrimination will not be the order of the day when certain vested interests will get off much easier than others so long as this particular provision is there? Who is to judge it? Is it the Collector? How is he to judge and on what grounds? It seems to me, Sir, that this is a matter which requires some further consideration than the Government have found it possible to bestow. I do not blame them. I know the tense atmosphere that must have prevailed in the Assembly—I can well realise it—the atmosphere—as has been referred to by my hon. Friend Mr. Suryanarayana Rao—must have probably forced them to take up this attitude. But still this is a matter which requires very serious consideration at the hands of the Government.

“Then, it is stated that a District Judge shall be the person who will consider these cases. If he is the person to consider them, what is the significance, I do not know. I therefore venture to request the Hon. Member to enlighten me. What is the significance of the provision in clause (5) of section 4 which says :

‘The Provincial Government may, by notification in the *Fort St. George Gazette*, make rules for the purpose of carrying the provisions of this section into effect, and in particular as to the fees to be paid in respect of the applications referred to in sub-section (3) and the procedure of the District Judge.’

What are the rules that this Government are going to make for the District Judge in regard to the trial of these cases? ”

THE HON. SRI K. MADHAVA MENON :—“Fees, summons, etc., who is to present the petition, where is he to present the petition, and all those things.”

* DR. SIR A. LAKSHMANASWAMI MUDALIYAR :—“If that is the case, I shall not take up more time over that point.

“I see one other clause to which reference has already been made. That is the last clause, which is an omnibus clause; it gives to the Government every power wherever they need it and to whatever extent they may care to exercise it, not only for the immediate implementing of these provisions of the Bill, but for all time to come. It says :

‘If any difficulty arises in giving effect to the provisions of this Act, the Provincial Government may, as occasion may arise, by order do anything which appears to them necessary for the purpose of removing the difficulty.’

Such provisions may be all right in Acts which are passed for the general good of the public or for emergency legislation. For

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instance, if my hon. Friend were to bring up a Public Health Act, I would readily support, because nothing can be done by the Government which could not be in the interests of the general public and it would be impossible for the Government to anticipate everything. But where a piece of what may be called expropriatory legislation is to be passed in this House, it seems to me that we are giving the Government far more powers than they need have or than they should have; and the possibilities are that if the Government are not very careful, those who on behalf of the Government are called upon to work this Act may not be as considerate as the Government themselves. I have on a former occasion referred to this point and have stated that when we say 'the Government,' it is not the Minister in charge, it is not the Cabinet, but it is those persons to whom this power will be delegated, who will be asked to carry out these measures to a very large extent—it is they who will be really acting on the provisions of this Bill and who will be the executive authority for this particular Bill. I am afraid, Sir, in a measure which vitally affects the interests of the people—for after all, whatever may be our view point about general moral standards, the world to-day is unfortunately in the grip of financiers and it is money that counts in every walk of life—I feel that such extraordinary powers will prove harmful to the Government themselves and will bring in a certain amount of criticism very unjustly because these extraordinary powers are not unlikely to be put to other uses than what they were intended for by agents of Government over whom it is impossible to have that complete control which a Government should have. My suggestion therefore to the Government is this: firstly, the Government must satisfy us in view of section 4 (1), that there is an urgency to pass this measure, secondly that even if this legislation is passed, a further measure amending this Bill, completely redrafting it and recasting it in the light of proper legal opinion, is the only thing that can legitimately be claimed by this Government and which this Government ought to do. This sort of compromise arrived at at the eleventh hour for the sake of a certain amount of unity is not the basis on which a very important and very far-reaching measure of this type should be based. I therefore appeal to the Government while I may not be in a position to stage a walk-out—I have never believed in those who stage a walk-out, and I do not propose to give a lead in that matter—I would respectfully request the Hon. the Leader of the House and the hon. Member who has moved this motion to consider and enlighten us whether, in the light of my reading of section 4 (1) there is any urgency at all for this measure and secondly if this Bill is passed, as it is bound to be passed from the point of view that Mr. Natarajan referred to, whether they will take steps to re-examine the provisions of this Bill and come before this House and the Lower House and tell us exactly how this Bill should be recast in order to put it in proper legal phraseology."

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* SRI S. B. ADITYAN :—“ Mr. President, Sir, it has been suggested by some members that this legislation is being rushed through. I can understand that statement coming from some member of the Opposition, but that the statement came from some of the Congress Party Members is somewhat surprising because this question has been discussed not for days but for weeks and every clause of the Bill has been discussed for many hours at a stretch, and the Bill now before the House is the result of all that thorough discussion. Sir, I do not feel unhappy in supporting this Bill; on the other hand, I feel very happy that it has been brought so quickly. Whether you feel happy or unhappy over this legislation depends on the angle from which you view the whole matter. There are some to whom vested interests are sacred, and could not be easily changed; on the other hand, there are others who feel that these so-called vested interests are an unhealthy accumulation which the sooner done away with, the better. This legislation has been called expropriatory. That is one view. That is the view which is put forward by those who worship these vested interests. There is also the other view, that what is sought to be done is merely to deprive those who have made unlawful gains which are not sacred just because they have been retained through generations. What is touched by this particular Bill is the common land and the forest land. The view has been expressed by certain members that these belong to the zamindar and as such we are trying to do something against private interests, to seize properties which are sacred by law. On the other hand, it is also the view that communal and forest lands belong to society for use for common purposes, and by taking them away from the zamindar, the Government are taking them away on behalf of society.

“ It was also mentioned that the punishment provided here is rather severe. What is provided is imprisonment for some months and fine. As against that, there is the view that persons who are in unlawful possession and who seek to do away with the land instead of allowing it to be transferred to the Government and through the Government to the society, people who want to transfer it to their own relations, to their next-of-kin, such people deserve to be punished. My learned friend Dr. John said that there is nothing in the Bill which is not provided for in the common law. That is not the case, Sir. Take the case for instance of a zamindar trying to alienate his land to a relation of his, as a gift. That was mentioned by Mr. Natarajan. That is not affected by the common law, but nevertheless prevented by this particular Bill. Some objection was also raised to the provision whereby the rights of the court to interfere are sought to be restrained. As a lawyer, as one who has practised for a good number of years, I know the idea of the executive trying to take legislative powers for themselves, trying to deprive the courts of their due functions, is disliked by lawyers. But this a temporary measure and it is well recognized that in a temporary measure of this nature the executive should and

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ought to try to prevent unnecessary litigation. Dr. Lakshmana-swami Mudaliyar said this Bill would open the flood-gates of litigation; I say it is exactly to prevent such a thing that this particular clause has been put in.

“ It has also been mentioned that this Bill has created some tension. It is quite true. It has brought to the forefront the clash which exists not only among members of the society but among the members of the Congress party itself. The Congress organization has been and still continues to be common to all classes of society. There are big zamindars and inamdars in it and also people who are from the lower rungs. The clash has been brought to the forefront, and it is now known that tension did and does exist. Those who worship the vested interests have tried their best to prevent this legislation coming on at this stage. Fortunately, some of us supported this measure in such a strong manner and insisted that it should be brought up as quickly as possible and I should really congratulate the Hon. Revenue Minister on having brought it up now, so that now at least justice may be done to the poorer sections of our people.”

At this stage the House rose for lunch.

(After lunch—2-30 p.m.)

DR. V. K. JOHN :—“ Mr. President, Sir, I request you to kindly allow me to move for adjournment of further discussion on this Bill to enable us to bring in necessary amendments. We have had no time to bring in such amendments. This Bill was passed late in the evening on Saturday in the Assembly and this came up here to-day and we have had no time to consider it and to move amendments. It has got retrospective effect. . . .”

MR. PRESIDENT :—“ What does the hon. Member want ? ”

DR. V. K. JOHN :—“ I want to move adjournment of further discussion of the Bill.”

MR. PRESIDENT :—“ Copies of the Bill were circulated to hon. Members on the 19th morning itself.”

DR. V. K. JOHN :—“ But we have had no time to bring in amendments in the light of discussions which we had here.”

MR. PRESIDENT :—“ Hon. members had full two days.”

DR. V. K. JOHN :—“ That is not sufficient time to consider, propose and move amendments. It is so important a measure. We do not always ask for such adjournments. We co-operate with the Government without any demur or opposition whenever it is possible to do so.”

MR. PRESIDENT :—“ The hon. Member is aware that to-morrow onwards till the 26th are holidays. So, if it is a question of adjournment, then, this will not become law before the

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26th. If it is the idea of the hon. Member, Dr. John, to move amendments, he may do so and I will put them to the vote of the House."

DR. V. K. JOHN :—" As the Bill is to have retrospective effect, there is no difficulty at all; it need not become law at present. So, Sir, I move for the adjournment of further discussion of the Bill."

* SRI R. SURYANARAYANA RAO :—" As it is a very important measure, we would like to read the proceedings of the other House and if the Government will be pleased to supply copies of the Select Committee Report, we would like to read them also. It appears to be an innocuous Bill and from what has appeared in the papers, its significance seems to be much more. I do not speak on the merits of the Bill. There may be many merits. But many defects have been pointed out by hon. Members on this side of the House and I think, Sir, it will redound to the credit of Government if they should enact a legislation with the help of the Legislature, a legislation which will not be found fault with by the judges or by the judiciary such as bad grammar, bad drafting, etc."

MR. PRESIDENT :—" I thought the hon. Member said that he would not take part in the discussion."

SRI R. SURYANARAYANA RAO :—" As I would like this subject to be adjourned I support Dr. John's motion."

MR. PRESIDENT :—" The question is whether the motion for adjournment is in order. I have given you two days' time and the hon. Member, Dr. John, could have told me this morning itself that he wanted to move adjournment of further discussion. I do not think it is in order."

DR. V. K. JOHN :—" In order to do justice, a legislative House or a Court has always jurisdiction to act in a manner that will be conducive to the administration of justice. To do justice to this Bill, the House has jurisdiction to adjourn further discussion and the Hon. President has jurisdiction to adjourn discussion of this Bill in the interests of the public."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" This to me, Sir, seems to be an extraordinary occasion, because some members opposite also feel with the members of the Opposition. Mr. Natarajan said that he might not live long—we all pray for his long life—and even gentlemen like Mr. Bhima Rao have come forward to give expression to their views. In spite of the fact that these hon. Members felt that they were in an embarrassing position, they gave expression to their own views. But, naturally, there will be the whip and they will have to vote the other way. Anyhow they have given expression to their views. Sir, this is the first occasion when members on the opposite side came forward

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with their own views so openly and they gave a frank expression of their views on the Bill. When I moved my Bill for the prevention of betting on horses some members opposite felt that they could not conscientiously vote with the Government, when they went out of the House, they gave expression to their views. This is the first time they have come forward to express their views and this Bill is an eye-opener not only for members on this side of the House but also for those members opposite whose views cannot be suppressed in the manner in which they are sought to be suppressed."

MR. PRESIDENT :—" That is not going to better or improve the Bill."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I agree with you, Sir. I also appreciate the manner in which you are allowing us to have a free and frank discussion on an important matter like this. Therefore, Sir, I think that there is very great reason for supporting Dr. John's motion for adjourning the discussion on this subject. I do not think anything will be lost by postponing discussion for the present. As a matter of fact, the Leader of this House and the Hon. Madhava Menon are members of this House. What the members of this House want is that they should be shown proper courtesy and they should be given sufficient time. Apart from that fact, you are the custodian of our rights and you have been safeguarding our rights in the proper manner."

MR. PRESIDENT :—" I have been trying to safeguard the interests of hon. Members here. I have been at great pains to give sufficient notice. It is due to my efforts that hon. Members got two days' notice of this Bill. So, I do not think there will be any difficulty in proposing amendments."

* THE HON. SRI K. MADHAVA MENON :—" I would request the Hon. the President to waive the three days' notice provided in the rules. I am opposing the adjournment motion of Dr. John. He says he wants to move amendments at this stage. Even in the morning when he spoke, he never mentioned about any idea of moving any amendments. He generally criticized the Bill on very vague grounds. Apart from that, there was two days' notice. Two days is ample time to move any sort of amendments. I see, Sir, that the feeling has come only after lunch and it is not a proper ground for moving an adjournment motion and it should not be allowed at this stage. I do not dispute the Hon. President's discretion to allow the adjournment motion but the present measure is so urgent and important that the adjournment of the discussion should not be allowed."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" I thought the Hon. Minister was interrupting me. I had not finished what I had to say. As a matter of fact, Dr. John has voiced the feelings of members on this side of the House as well as of members on the other side. I am sure many hon. Members

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on the other side feel with the majority of members on this side. Dr. John simply took the clue from some of us and moved the adjournment motion."

MR. PRESIDENT :—" What does the hon. Member exactly want?"

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" We want an adjournment of the discussion, Sir, to consider this question in a cooler atmosphere."

THE HON. DR. T. S. S. RAJAN :—" It is very cool to-day " (Laughter.)

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" The atmosphere may be cool but the discussion is not. Therefore, we want some time to consider the Bill and to give amendments. Nothing will be lost by giving us time. As a matter of fact, a number of speakers have pointed out, that, as you are going to give retrospective effect to the clauses of the Bill, nothing will be lost by giving some more time for considering the Bill properly. As a matter of fact, let not the outside world look down upon the Legislature. I know that the Legislature and members of the Legislature have been looked down upon by higher quarters such as the Chief Justice of the High Court in matters like this."

THE HON. DR. T. S. S. RAJAN :—" We do not wait for a certificate from the Chief Justice, and we are not here to please anybody."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" It is not a question of pleasing or condemning anybody. We frame laws ; but those laws should be framed in such a manner as not to give room for any criticism or in a manner which will give room for the courts to find fault with them. For this reason, Sir, we should be given sufficient time before enacting any measure. Therefore, I submit, Sir, that in order that people may not look down upon us, sufficient time should be given before deciding this question. Therefore, Sir Dr. John is perfectly right in asking for the adjournment of the discussion of this question."

2.45
p.m.

MR. PRESIDENT :—" What has the Leader of the House to say?"

THE HON. DR. T. S. S. RAJAN :—" This is a most unusual procedure in any Legislature. We have proceeded half way in our discussions and when it has lasted for more than 2½ hours the hon. Member takes into his head to create a stunt perhaps, after a good lunch. This procedure cannot be accepted in any House. I am not a lawyer and therefore I am not worried about the legal aspects like so many people on the right as well as the left. I always keep my head cool and have a sort of instinctive common sense which guides me. If I had legal knowledge I might have confused

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myself. Our hon. colleague Dr. Lakshmanaswami Mudaliyar did not confuse himself with these legal points but he put a plain point of view and he said Government should give an assurance that whatever fault there is in the Bill it will be corrected and brought into the Legislature which looked like the right sort of thing. The whole thing was over and we had to give the chance to other members to speak but the fact that one or two of the lawyers are on this side and supported indirectly in a way, the Bill seems to have upset our friends of the opposition to think mistakenly that there is a case for adjournment. It is absolutely necessary, Sir, that you as the custodian of the rights of the House should not permit the adjournment motion."

DR. V. K. JOHN :—" This is not an adjournment motion, but a motion for adjournment."

THE HON. DR. T. S. S. RAJAN :—" Probably the legal instinct in Dr. V. K. John has prompted him to put me correct. I am not a lawyer as I stated already and such reverses of the word from one position to the other will satisfy only legal conscience."

MR. PRESIDENT :—" Can the hon. Member Dr. John refer to the rules and tell me whether there is any provision for adjournment of the debate? I am not aware of any."

DR. V. K. JOHN :—" There is no provision against it, Sir, and it will be doing bare justice if the House is allowed further time for consideration of this Bill."

THE HON. DR. T. S. S. RAJAN :—" Lawyers have become positively dangerous to-day."

SRI B. NARAYANASWAMI NAYUDU :—" I think there is provision, it may not be in writing."

MR. PRESIDENT :—" I must agree with the Government. It is rather unusual that such a request has been made now and if it had been made before we started business I might have considered it. I was anxious to give the House as much notice as possible and the House had full two days to give amendments. The purpose of the present motion is to enable members to give amendments. I do not think there is any other purpose behind this motion for adjournment except that hon. Members wish to give such amendments as they like and I do not think the hon. Members have satisfied me that they could not have given them within two days or at least this morning. Such a request could have been made this morning and I would have given them time till lunch to propose such amendments. Moreover, Rules 102 to 112 which govern the conduct of the Bills originating from the Assembly do not contemplate any motion for an adjournment of this kind to enable members to give amendments. Even now no amendment has been given to me. They are asking for adjournment to enable hon. Members to give amendments later on. I am very reluctant

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to disallow this motion for adjournment. I am sorry I have to do it but I find there is no other go. The discussion may now be continued."

*SRI S. A. S. RM RAMANATHAN CHETTIYAR :—" Mr. President (Some voices : ' English Speech ! ') பாக்கி எல்லாம் தமிழில்தான் வரும். இந்த பில்லானது பல அறிவாளிகளாலும் பெரியார்களாலும் பேசி ஒரு தினுசான நிலையில் இப்பொழுது இருக்கிறது. அதைப்பற்றி நான் அதிகமாக பேசப்போவது இல்லை. ஆனால் Lower Assembly-ல் 212 மெம்பர்கள் இருக்கிறார்கள். இங்கும் 56 மெம்பர்கள் இருக்கிறார்கள் என்பதாக என் ரூபகம். 212 மெம்பர்கள் இருக்கிற இடத்தில் Select Committee-க்கு அனுப்பி யோசிக்கும் காலத்தில் இந்த 56 மெம்பர்கள் இருக்கிற கவுன்சிலை ரூபகத்தில் வைத்துக்கொண்டு இரண்டு, மூன்று பேர்களையாவது அந்த Select Committee-ல் சேர்த்திருந்தால் இப்பொழுது இந்த பேச்சுக்கு இடம் இருந்திருக்காது. இதற்கு முன் அநேகம் பில்கள் பாசாகி இருக்கிறது. ஒரு பில்கூட கவுன்சில் மெம்பர்களை Select Committee-ல் சேர்த்து Pass செய்யப்பட்டதாக தெரியவில்லை. "

THE HON. DR. T. S. S. RAJAN :—" நேற்று பில்லில் சேர்த்திருக்கிறார்கள். "

SRI S. A. S. RM. RAMANATHAN CHETTIYAR :—" நான் நேற்று இல்லை. அப்படி சேர்த்தபொழுது நான் இல்லாததால் எனக்குத் தெரியவில்லை. இருந்தாலும் இப்பொழுது அதற்கு ஒரு பரிகாரம் easy யாக செய்யலாம். தலைவர் அவர்களும் கவர்ன்மெண்டு அவர்களும் சம்மதித்தால் அந்த பரிகாரத்தை செய்வதற்கு இன்றைக்கு டயமிருக்கிறது. ஏதாவது 2, 3 பேர்களை இப்பொழுது Select Committee-க்கு போடுவதாக வைத்துக்கொண்டு இப்பொழுது கூட்டத்தை ஒத்திவைத்து பிறகு ராத்திரி 9-மணிக்கு திரும்பவும் meeting வைத்துக்கொண்டு, இது அவசரம் என்று சொல்வதால் இன்றைக்கே Pass செய்யலாம். "

MR. PRESIDENT :—" இன்று Select Committee கூடுவதற்கு இல்லை. சட்டம் கிடையாது. "

SRI S.A.S. RM. RAMANATHAN CHETTIYAR :—" சட்டம் இல்லாவிட்டால் சட்டத்தை மாறுதல் செய்தாவது பாஸ் செய்யவேண்டும். இங்கே இருக்கிறவர்களை Select Committee-க்கு அதிகமாக சேர்க்காவிட்டாலும் வெளியிலிருந்து 2, 3 பேர்களை சேர்த்துக்கொள்ளலாம். வெளியில் என்ன சொல்லிக்கொண்டிருக்கிறார்கள் என்றால் வேண்டுமென்ற வாய்க்கொண்டு நீங்கள் என்ன செய்கிறீர்கள் என்று கேட்கிறார்கள். அப்படி 2, 3 பேர்களை சேர்த்தால் இவ்விதம் கேட்க இடம் இல்லாமலிருக்கும். இந்த கவுன்சில் மெம்பர்களில் 2 பேரையாவது கமிட்டியில் சேர்க்கும் சந்தர்ப்பம் இருக்கும்படி சட்டத்தை திருத்தவேண்டும். மாகாணத்தில் வெளியிலிருக்கிறவர்களைக் கூட சேர்க்கிறார்கள். மெம்பர்களாக இல்லாதவர்களைக் கூட சேர்க்கிறார்கள். சட்டம் குறுக்கே நிற்காது. இஷ்டமிருந்தால் சேர்த்துக்கொள்ளலாம். சேர்த்துக்கொண்டு நல்லது செய்தால் நன்றாக இருக்கும். ஆனால் 26-ம் தேதிக்குள் பாஸ் பண்ணவேண்டுமென்று சொல்லுகிறார்கள். 9 வருஷத்திற்கு முன்னிலிருந்து காத்தவருவதனால் இன்னும் இரண்டு மாதங்கள் சந்தர்ப்பம் அளித்தால் இந்த மாதிரி பேச்சுக்கு சந்தர்ப்பம் இல்லாமலிருக்கும். செய்யப்போகிறோம் என்றால் யாரும் தடை செய்யப்போவது இல்லை. விஷயம் எப்படி இருந்தாலும் பிரிந்துபோகப்போவது இல்லை. சொல்லவேண்டியதை சொல்லவேண்டுமென்பதற்காகச் சொல்லுகிறேன். ஆகையால் இனிமேல் எந்த கமிட்டி நியமித்தாலும் கவுன்சிலிலிருந்து 2, 3 பேர்களை அவசியம் எடுத்துக்கொள்ளவேண்டுமென்று. . . "

ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" 2, 3 பேர்கள் மட்டும் தானே சேர்க்கவேண்டும் ! " .

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SRI S.A.S. RM. RAMANATHAN CHETTIYAR:—“ 56 பேர்களுக்கு 2, 3 பேர்கள் போதாதா? ஏதாவது மெம்பர்களை இந்தக் கவுன்சிலிலிருந்து நியமிக்கவேண்டும் என்று Lower Assembly-க்கு யார் காரணஸ்தர்களோ அவர்களை மன்றாடிக்கேட்டுக்கொள்ளுகிறேன். ”

* **SRI C. N. MUTHURANGA MUDALIYAR:**—“ Mr. President, Sir, I am glad I have been enabled to speak on the Bill under discussion once again. I was anxious what my friend Dr. John's motion for adjournment will do but fortunately, Sir, you have ruled it out of order and we are again in the midst of the discussion of the Bill.

“I really support this Bill that has been presented in this House though I had my suspicions about the Bill as it originally appeared. My objections have mostly been solved after the Select Committee examined this Bill and it has now been passed by the Assembly. No doubt originally I was given to understand that this Bill affected only the Zamindaries and even amongst them the impartible estates only. I do not know if that is true and I do not know whether they do not affect the inamdaras also. The second clause to section 1 says 'It extends to all estates in the Province of Madras governed by the Madras Estates Land Act, 1908.' The inam villages are not governed and have not been governed by the Estates Land Act of 1908. The inam villages have been brought in only in the 1936 Act. So I am led to believe even as it is this Bill does not affect the inam villages but even if it should affect the inam villages there is not much of communal lands or forest lands in inam villages as there are in Zamindari villages. Moreover several amendments have been carried out in the Select Committee by exempting 20 acres and less and all these things have removed several of the poisonous fangs of this Bill and I do not see any objection to pass this Bill as it is. We need not have to adjourn this discussion and gain time to move amendments. We know what the fate of these amendments are going to be. Once it is passed in the Assembly—you need not laugh at me—(referring to Dr. John), I maintain that this Council has not got any real powers and it has not got any right to exist. That was my contention and you need not laugh at me. You may laugh at the fact that we have agreed to sit in this House which has no power. So, Sir, we need not adjourn or move amendments. We can agree to pass this legislation as it has emerged from the Assembly. Mention was made that a tense situation had arisen in the Assembly. And what is it that it has created; this tense situation has produced some slight modification in the Bill. You will also readily admit that after all these tense situations are created more by the press than the reality of the situation warrants. Sincerely. I say there has been no tense situation at all and here and there some members may disagree with the general trend of opinion and they may threaten to resign and they may reconsider it after some modifications had been effected in the Bill. These

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are all ordinary happenings and one need not describe it as a tense situation and as a crisis in the Ministerialist Party; all these are mere propaganda. I am sorry my hon. Friend Mr. Natarajan should have dilated here upon differences in the party and that has encouraged my friend Dr. John to move this motion for adjournment. He should not be influenced by the criticisms of the Opposition. It is the duty of the Opposition to oppose and to criticise and in their opposing, they will certainly adduce arguments and if arguments fail, they will abuse the other side. They will say: 'You are all sheep; in the Congress party, you have developed the herd instinct; you talk one way and vote the other way.' We should not be carried away by it. We should take all that coolly. Whatever they say, we must take them as endearing terms."

K. T. M. AHAMED IBRAHIM SAHIB BAHADUR :—" The hon. Member specifically stated that when the Opposition has no arguments to make, it will abuse the other party; that is attributing motives. Is it parliamentary? "

* SRI C. N. MUTHURANGA MUDALIYAR :—" I do not take all that was said of us from the Opposition as abuse. We were quite easy of mind and happy and cool when we were referred to as sheep and possessing the herd instinct. I may tell you, Sir, yesterday during the discussions on the formation of linguistic provinces, we were admonished that we were quarrelling that we were fanatical and if in the midst of the present day bitterness, a boundary commission were to be appointed, we were bound to quarrel as the quarrel which has arisen in North India. Now I feel glad that we were called sheep and that we show the herd instinct quite often."

MR. PRESIDENT :—" I do not know if anybody called you sheep."

SRI C. N. MUTHURANGA MUDALIYAR :—" At least the Congress party can take credit for the herd instinct and I appeal to all sides of the House to join the Congress party and acquire this sheep instinct so that we can all act unitedly and not quarrel, when the boundary commission is appointed.

" With these words, I beg to support the motion to consider the Bill as passed by the other House."

SRI N. RANGA REDDI :—" Mr. President, I would not have participated in the discussion but for the fact that during the course of the discussion, my hon. Friend, Mr. Natarajan, has brought in my name. It is unfortunate that differences in the party should be thrashed on the floor of this House. It is to nobody's interests. If there had been any differences in the party, members who hold one view had their full say and every point has been fully thrashed out and the principle introduced in the Bill represents the unanimous conclusions arrived at that time. If still there are some differences, I should submit they are not very great and have to be acquiesced in as being the decisions of the majority."

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MR. PRESIDENT :—“ You had never any doubts about the Bill? ”

SRI N. RANGA REDDI :—“ No, Sir. (An hon. Member : ‘ Mr. Natarajan was merely consistent in his attitude. ’)—Very often consistency is not a virtue and some times one has to be inconsistent.

“ One of the points urged against the Bill was that it does not benefit anybody. I wish to submit to the House that it is not so; on the other hand, it is intended to benefit the whole society. Ordinarily, when legislation is passed, generally it benefits one individual or the other. But so far as this legislation is concerned, it benefits all. It has been said that it does not benefit anybody because neither the vendor nor the vendee want to agitate for their grievances and therefore, it does not benefit anyone. The transactions occurring after a particular date have been declared void and the principle has been that communal lands and forest lands belonged to the state and the state is interested in them, not only in the distribution but in the proper administration of them and every one of us is entitled to have a share in the welfare and distribution of those lands. There is not much point in saying that it does not benefit any one; but on the other hand, this is the one Bill which benefits all people in the presidency and not anyone in particular.

“ The next point is that this House has not been taken into confidence in the framing of this legislation and had not been called upon to take a share in the debates on it in the Select Committee stage. It is no doubt true that this House should be as zealous with regards to its rights as the other House in measures which are brought before them to be discussed in Select Committees. On that point, the Leader of the House has given the assurance that members of this House will be taken into confidence and that they would be entitled to sit in Select Committees. Therefore, we may rest satisfied with the assurance that the rights and privileges of the House will be honoured and respected in future.

“ Hon. Members are aware that the principles of the Bill have been in the air for a long time. Hon. Members are aware that in 1938, the Prakasam Committee enquired into the zamindari problem and they also went into the question of communal and forest lands. The Report was submitted but before legislation on the basis of that Report could be introduced, the Congress Ministry went out of office and it was not possible to proceed with the legislation. The Adviser regime which succeeded was not interested in introducing legislation concerning the welfare of the tenants. All the same, the report was published and it was available to one and all. People who were interested in keeping these private lands and communal lands so far now began to make profits by alienating them to their friends and relations and to their next of kin and having sold what they could, they wanted to claim what was left as their own. There were friends who cited precedents

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and said that this ought not to be done. On such and such occasion, it was not done, the same precedent must be followed now and it must not be done now, so they said. Let me tell you that it is for purposes of setting aside such alienations and mortgages that the Bill is intended. For if on each occasion and on each matter, we were to go to the court of law, it would mean waste of time and waste of money. If this Bill is not brought in, what will be the position of the buyers? He will be just in the position as any other purchaser of property and his right therein is inviolate as it belongs to him and not to the State. The principle of the Bill proceeds upon the assumption that the zamindar is not the proprietor of the communal or forest lands but that he is only the rent collector and therefore, he does not possess a right to dispose of it. If the Government have to go to a court of law in each case, it will take a long time and there is also the question of cost and that is why provision has been made declaring transactions after a particular date null and void.

"What was enacted in clause 5 of the Ordinance is re-enacted in the Bill in clause 6. I must submit that this is a very salutary check. It is well known that so far as the criminal law is concerned, anybody can set it in motion."

MR. PRESIDENT:—"Did anybody object to that power being given to the Collector?"

DR. SIR A. LAKSHMANASWAMI MUDALIYAR:—"If I may be permitted to say so, it is not that the Collector may not prosecute but that he may not be able to prosecute."

SRI N. RANGA REDDI:—"In my opinion, there must be somebody to hold up prosecutions as a sort of check against indiscriminate or improper prosecutions and for that purpose the person that sanctions the prosecution is the best person to be empowered in that behalf. Otherwise, there may be indiscriminate prosecutions or persons not concerned might be prosecuted. The District Judge is also invested with powers to sanction prosecutions but it could only be done after holding enquiry and recording evidence. But the District Collector is an executive officer and he can see the records prepared by the investigating staff and take the necessary action. It is necessary that some section like that should be introduced; otherwise innocent people might be prosecuted unnecessarily. I support the Bill brought by the Hon. Minister."

* THE HON. SRI K. MADHAVA MENON:—"Mr. President, 3-15
Sir, after the question of this House not being taken into con- p.m.
fidence in matters of legislation by not being given sufficient representation on select committees was considerably thrashed out yesterday, I did not anticipate the bitter complaints about that to-day also, when I moved this Bill giving the reasons why there could not be a select committee of this House. Mr. Suryanarayana Rao was not doing justice to me when he said that I wanted to treat this House as a set of school boys, and that it

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could swallow anything easily. When I said that this is a simple measure, I said so because the matter was sufficiently for a long time before the House and the public, and more because I knew that this House is too mature for all this. Even for school boys in these days, we will think twice before telling them that they would be disregarded. So, it is not fair to say that this House is being treated like school boys. It was far from my idea. On the other hand, knowing the experience and the intelligence of this House, I thought that there was no necessity for me to explain more than what has been said in connection with this Bill. Sir, it is very easy to raise many objections. Dr. John, an able lawyer as he is, wants to make out that the whole thing is absolutely useless; absolutely redundant, unnecessary, unwarranted, and again there is neither law, nor sense nor anything in this Bill. It is very easy"

MR. PRESIDENT :—" You do not take it as an abuse."

THE HON. SRI K. MADHAVA MENON :—" I am here to hear the abuse, Sir. (Laughter.) I do tolerate abuses being hurled, and our skins are sufficiently tough; (more laughter) and we are not worth to be here if we are not sufficiently tough in our skins. After all, I do not take it as an abuse even calling as a sort of sheep, herd instinct, etc. Because, in these matters, I take it as a compliment that we can follow where the lead is given. It is easy to raise a bogey of an imaginary defect in a thing and make it a very big one and say that a great injustice is being done. I will take one instance. Dr. John said that it is the nature of the Government to distrust Courts, or the whole thing is a distrust of courts, and he also said, a great lawyer as he is, that clause 7 ' No notification or order of the Provincial Government or of the District Collector under this Act, shall be liable to be questioned in any Court of Law ' is a complete distrust of courts. This is what Dr. John makes much of, but he conveniently forgot sub-clause (4) of clause 4 which would show that not only we have no distrust of Courts, but considerable trust and respect and belief in courts. In sub-clause (3) to clause 4, we have provided ' If any dispute arises as to the validity of the claim of any person to any land under clauses (i) to (v) of the proviso to sub-section (1), it shall be open to such person or to any other person interested in the transaction or to the Provincial Government, to apply to the District Judge of the district in which the land is situated, for a decision as to the validity of such claim '. Does this show want of trust in courts? Is it not simply a matter of propaganda to say that this Government is out to do away with courts. Mr. Natarajan also said that it is want of trust in courts. It is not want of trust in courts, but it is the distrust of eminent lawyers."

MR. PRESIDENT :—" That is why Dr. John has complained against you."

* THE HON. SRI K. MADHAVA MENON :—" Because, only in an emergency we pass an order, and if it is not to be taken

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to a court of law it is not distrust of courts, Sir. I was one of those who have been practising as a lawyer as Dr. John. The provision for emergency orders is for action by the executive when necessary. It is very wrong to say or create a feeling that there is distrust of courts. The gravamen of Dr. John's charge is that 'whom are we going to protect by this bill'. Where is the sanctity of private property? Why should not the owner of a property deal with it as he likes? Are you not restricting his liberty of alienating his property? I beg to submit, Sir, that every law is, to some extent, a restraint upon individual liberty. If they are not going to grant that, we will not be able to prevent theft. I do not want to make more ridiculous comparisons. But I would only say that every law puts a restraint upon individual liberty and it does not allow persons to do things as they like, and so, the only question is if a restraint on individual liberty is in the interests of the community as a whole, or in the interests of the majority of the community as a whole, and it is for their social well being, we allow that restraint to be put on ourselves for the commongood or for the good of the majority. I request Dr. John to view this in that light. Unfortunately, persons of Dr. John's persuasion, cannot think like that in many matters. The whole question is that we are concerned with communal lands and forest lands. Dr. John asks alienation of communal lands itself is bad under the law; and for one of bad faith, there is the Transfer of Property Act; and where does this consideration for good faith come? May I, in this connection make another comparison? We get news that there is likely to be a big riot. Why should we take action under Section 144, Criminal Procedure Code, and prevent any meetings? Let heads be broken and we can charge the people under Section 302, Indian Penal Code, with murder. Sir, this is not the question. We must certainly do things in time. So, to prevent certain hardships, we must take powers into our hands, and that is the reason for this clause. Even under the strict interpretation of the Transfer of Property Act or the Contract Act, an alienation which has taken place can be set aside for want of consideration or bad faith. But why then should you drive the alienee to take action under the Contract Law if you can prevent it by another law? That is my reason, Sir, for bringing this legislation.

"Some of us, Sir, feel that communal lands are for the good of the community, and the zamindar or anybody in possession of these lands have no right to treat them as his own property and dispose of them, gift them or will them away for any consideration. In the case of forest lands, under the law as it stands at present, it may be that the courts have given the zamindars some powers. But persons of my persuasion think that forest lands ought to be the property of the public and society generally. The well being of a country depends on the proper well being of the forests. You cannot say that we have not informed the public, and the public do not know what are our ideas about forest lands.

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I ask Dr. John, Sir, to peruse the Prakasam Committee Report. The Prakasam Committee Report in 1939 specifically said that all forest lands, whatever their present position may be, shall be treated as belonging to the public. So, Sir, this particular legislation refers primarily to alienations of communal lands and forest lands. We want to prevent alienations of these two lands pending the major zamindari legislation that is coming. Anticipating the zamindari legislation that is coming, as is natural to human instinct, some people, who think that they will be affected by it, are trying to make as much hay when the sun shone. That is what I said when Dr. John asked whom are we protecting, that in some cases we are protecting those persons who want to make money at the expense of his communal lands. Either by abolition of the zamindaris or by the provisions in previous legislations, communal lands belong only to the community and not to any individual. To avoid the difficulty of these lands being alienated, we wanted to take power beforehand and see that such alienations did not take place. That is the reason, that is the argument, and that is my reply to Dr. John's question 'Why do you want to interfere with private property?'. I do not concede that communal lands are under private ownership. That is why I say that these alienations should be prevented by legislation, Sir. I do not want to expatiate further. Dr. John was trying to make out a case that there is a great encroachment upon individual liberty and that life is going to be miserable if individual liberty is to be cut like this. If a certain liberty, in the interests of society, has to be cut, it will be done, and it has to be done. This is my answer to that question, Sir. (Interruption.) My hon. Friend says that I am making a good speech. Then, Sir, he said these are the results of confused minds. If he (Dr. John) is cleared of his confusion, I am glad, Sir.

"Then, Sir, he said this Bill is clumsy and ill-arranged. One instance of the ill-arrangement of the clauses, which Dr. John said, is that clause 5 dealing with powers of First-class Magistrates to impose fines exceeding one thousand rupees ought to come under clause 3 which deals with the offence. With due deference to Dr. John, Sir, I beg to differ here. My recollection in other provisions of law is that substantial portion of the law is given in the earlier sections, and the procedural section is always given in the last. My sense of order is that procedural sections should always be the last and not otherwise. I was a little bit surprised to see that even Mr. Natarajan and Mr. Bhima Rao should have grouse that proper opportunities for discussion had not been given them. I do not want to say more about it. I can only say that in spite of the fact that opportunities were there, as I said earlier, the feeling that communal land and forest land should belong to the society would not be acceptable to many, and such feelings die hard, and they have been carried away to provocation. Mr. Narayanaswami Nayudu spoke of sheep and herd instinct. I am not going to say anything about it except one thing. At least if

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cannot be said hereafter that we are not allowing free expression of opinion on our side of the House. Mr. Narayanaswami Nayudu cannot taunt us like that henceforth.

“ Dr. V. K. John gave us a picture of an alienation by a zamindar where there is hardship. He asked, ‘ if he had converted waste land into arable land under Grow More Food scheme, are you going to penalise him? ’ I say, ‘ yes ’. If it is communal land, certainly he deserves no protection, for the simple reason you cannot take other people’s property and make profit out of it. Dr. John also said, ‘ you have got brute majority and you can do anything ’. Sir, ‘ the tyranny of the majority has become a cheap gibe.’ Is it the tyranny of the minority that should be the rule? It is always the voice of the majority that rules; it is the brute majority that rules. It is against all common-sense to say that brute majority should not rule. For the charge of the tyranny of the majority I have only to say that the people have faith in us and so have put us in a majority. The charge of steam-roller majority and brute majority is all beside the point. Let us go to the arguments and not cast cheap gibes. It may be said, ‘ your own men have made complaints.’ There might be complaints. But as pointed out by Mr. Ranga Reddi what is done is for our common good, and for common good we are willing to sacrifice our individual feelings.

“ As I said already, confusion in thinking is not in us, but in those who attribute that to us. I don’t think ignorance of law can be attributed to us. I plead guilty to the charge that I may not know as much law as Dr. John. But I charge him with ignorance of conditions of things outside and of the people. If he had only opportunity to know it he would not have levelled that charge.

“ Mr. Narayanaswami Nayudu was very vehement about steam-roller methods. It is a fact we have to use steam-roller methods. When I have a steam-roller, why not I use it? If I see the road is in a rugged condition why should I not use it to make the level all right? Why should I not use the steam-roller to make the road good so that your car may go smooth over it?

“ Another thing that was said was, ‘ what is the difference between the Ordinance and this Bill? ’ I said in my opening remarks why this Bill had to be brought to-day. Dr. Lakshmanaswami Mudaliyar asked me, ‘ when you have provision for giving retrospective effect, where is the hurry to proceed with this Bill? ’ I admit those provisions are there. But if the Bill is not passed to-day it has to wait for some time. But in the interregnum between the lapse of the Ordinance and the passing of this Bill a number of bad transactions might take place, as the number of bad transactions that took place within a few days before the publication of the Zamindari Bill. If that is allowed to take place, it will be the duty of the Government or the people concerned, thereafter to file suits to set aside those alienations. We cannot imagine

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what people will do. For the ingenuity of man to circumvent a rule is beyond all comprehension; and so we feel it is better to prevent it.

“ May I inform Dr. Lakshmanaswami Mudaliyar that this Bill is only a temporary measure, which will die automatically with the passing of the Zamindari Bill, which, we hope, will be passed very soon. And so there is no danger or hardship by passing it to-day.

“ On the question of wording of the clauses, Dr. V. K. John said about the grammar and about the significance of the date of the 27th June 1947. Sir, we are only reproducing the wording of the Ordinance, and all actions taken on that should be followed up in the same way and that is why it has been written like that, and there is no mistake in that. Mr. K. Natarajan said that he knew of two instances of alienations. I know, of not two, but two hundred improper alienations where tank-beds which ought to have been repaired, have been alienated and people purchasing the same thinking that this is the opportunity, and some passing it on to binamidars! They may be hard cases in all general legislation, but to minimise the cases of hardship as far as possible, there is the proviso in section 4. (Dr. V. K. John : That shows bad law.) Hard cases can't make bad law. Dr. Lakshmanaswami Mudaliyar asked whether we have considered any amendments to clause 4. I may say all the amendments to clause 4, except sub-clause (5), were amendments brought by Government themselves. After the select committee met we have considered the matter, we have taken the advice of law officers, and provisos one to four were moved by Government themselves; and besides these, there were amendments moved by other members in the Lower House. Amendment to sub-clause 5 was actively considered and expert opinion was taken on it and then Government have accepted it. So that all this has been done to minimise the hardship as much as possible so that it may not be said that it was out of brute majority or steam-roller majority or anything of the kind that we wanted to do this.

“ I am very sorry that Dr. Lakshmanaswami Mudaliyar has misunderstood the absence of the Revenue Minister here. He said that for ordinary courtesy he should have been here to answer things. Certainly I agree he has been in charge of the matter and he would be able to understand things, and more about criticism. But it is not for want of courtesy that he is absent. For certain necessity, which he could not avoid, he has to be absent from the city, and so I had to take charge and do the business as best as I could. So I have to say this ‘ want of courtesy ’ is an unfair charge, as he has to be away from the city for reasons beyond his control.

“ I do not want to speak at length about clause 6. Dr. Lakshmanaswami Mudaliyar is under a misapprehension about it. That clause wants to put a check on improper transactions. Government know the implications of the Act. Government know when sanction to prosecute should be accorded and when not. And so they have empowered the district magistrate to do this. If we

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allow private parties to file criminal prosecutions, it has to be done under section 476 of the Criminal Procedure Code. First of all, a petition to secure sanction has to be filed. And after sanction is accorded, the party may not immediately launch the prosecution but use it to blackmail others. So to prevent that Government have taken this step.

“ The last point made much of by Dr. John was about the omnibus clause 9. I am very sorry that such a person should have said that in no legislation in a civilised country is there that saving power. I can understand his contention if Government had come forward with a single-clause Bill saying that Government hereby take all power to do anything to prevent improper alienation of communal lands, etc. This clause is to be used to remove any difficulty that may arise in giving effect to the provisions of this Bill. Dr. John, being a lawyer himself, must know the various difficulties that arise in the actual working of any enactment. It is only in such cases this power is to be used. It is not an imaginary power to do anything that you want to do under the moon that is conferred by this clause. Therefore it is not proper to confuse issues by saying that this is an outrageous power that any civilised Government can wield. I do not wish to say anything more. There is no necessity for any alarming interpretation on a very innocent clause. I request the House to pass the Bill.”

The motion that the Madras Estates Communal, Forest and Private Lands (Prohibition of Alienation) Bill, 1947 (L.A. Bill No. 26 of 1947) as passed by the Legislative Assembly be taken into consideration at once was put and carried. 3-45 p.m.

Clauses 2, 3, 4, 5, 6, 7, 8, 9, 1 and the Preamble were put and carried.

THE HON. SRI K. MADHAVA MENON :—“ I move, Sir—
‘ that the Madras Estates Communal, Forest and Private Lands (Prohibition of Alienation) Bill, 1947 (L.A. Bill No. 26 of 1947) as passed by the Legislative Assembly be passed into law.’ ”

The motion was put and carried and the Bill was passed into law.

IV.—GOVERNMENT MOTION *RE* ELECTION OF ONE MEMBER TO THE
STANDING ADVISORY BOARD FOR TECHNICAL EDUCATION.

THE HON. SRI T. S. AVINASHILINGAM CHETTIYAR :—
“ Sir, I move—

‘ that this Council do proceed on a date to be fixed by the Hon. the President to elect one member of this Council to be a member of the Standing Advisory Board for Technical Education, constituted in G.O. No. 1829, Education, dated the 19th August 1947.’

“ I am sure, Sir, that hon. Members of this House would like to know the constitution of the Board as well as the objects for